

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHARLES T. SMITH, III

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Appeal No. 2002-0754  
Application No. 09/046,797

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ON BRIEF

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Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 5, 7, 10 through 14, 16 through 19, and 21. Claim 6 stands objected to (Paper No. 19, page 10), and claims 8 and 9 have been withdrawn from consideration as being based upon a non-

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elected species. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to an unpowered road luge and an unpowered road luge used by a reclining rider. A basic understanding of the invention can be derived from a reading of exemplary claims 1, 17, and 21, respective copies of which appear in the APPENDIX to the main brief (Paper No. 21).

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

Matsuura	3,913,929	Oct. 21, 1975
Wiener	4,548,421	Oct. 22, 1985
Dean et al (Dean)	4,592,563	Jun. 3, 1986
Eilers	4,993,733	Feb. 19, 1991
Shoquist	5,785,330	Jul. 28, 1998

The following rejections are before us for review. <sup>1</sup>

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<sup>1</sup> A final rejection of claims 1 through 3, 7, 13 through 16, and 21 under 35 U.S.C. § 103(a) based upon the combination of Carn and Hoffman references was withdrawn by the examiner (answer, page 2).

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Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Matsuura.

Claims 1 through 5, 7, 10, 13, 16 through 19, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eilers in view of Matsuura.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsuura in view of Shoquist.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Eilers in view of Matsuura, as applied to claim 1 above, further in view of Shoquist.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsuura in view of Wiener.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Eilers in view of Matsuura, as applied to claim 1 above, further in view of Wiener.

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Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsuura in view of Dean.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Eilers in view of Matsuura, as applied to claim 1 above, further in view of Dean.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 22), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 21 and 23).

#### OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied teachings, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We cannot sustain any of the rejections on appeal for the reasons articulated below.

At the outset, it is critically important to recognize that every one of appellant's claims requires an "unpowered road luge". Read in light of the underlying disclosure, we have no doubt whatsoever but that one skilled in this art would readily comprehend that an unpowered luge is one that operates by running downhill (specification, page 1). In other words, for its operation the luge itself has no structure for powering it manually or otherwise (e.g., it lacks pedals and a prime mover such as a motor or engine). With the above understanding in mind, we turn now to the examiner's rejections.

#### Anticipation

The unpowered road luge defined in Claim 11 is not anticipated by the low center-of-gravity cycle of Matsuura. Simply stated, the cycle of Matsuura is provided with pedals for powered operation by a rider. For the preceding reason, the anticipation rejection is not sound and cannot be sustained.

Obviousness

The unpowered road luge of claims 1 through 5, 7, 10, 13, 16 through 19, and 21 would not have been obvious based upon the combined teachings of Eilers and Matsuura. Akin to Matsuura, as described above, Eilers teaches a three wheel recumbent vehicle provided with pedals for powered operation by a rider. It follows that, collectively considered, these teachings would not have been suggestive of an unpowered road luge, as claimed. It is for this reason that the obviousness rejection at issue cannot be sustained.

The unpowered road luge of claims 11, 12, and 14 would not have been obvious based upon the teaching of Matsuura and the combination of Eilers and Matsuura, respectively, as discussed above, further in view of Shoquist, Wiener, and Dean. Simply stated, each of the latter references fail to overcome the noted deficiency of the Matsuura reference and the combination of Eilers and Matsuura. It follows that the respective rejections of claims 11, 12, and 14 cannot be sustained.

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REMAND TO THE EXAMINER

We remand this application to the examiner to assess the patentability of the claimed "unpowered" road luge under 35 U.S.C. § 103 taking into account the combined teachings of the known directly steerable unpowered road luge (appellant's specification, pages 1 and 2) and other relevant known vehicles, e.g., the Matsuura cycle, Eilers vehicle, and soap-box derby vehicles.

In summary, this panel of the board has not sustained any of the rejections on appeal. Additionally, we have remanded the application for consideration of the matter described above.

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The decision of the examiner is reversed.

REVERSED AND REMANDED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

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